

Message Text

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PAGE 01 BONN 00431 101642Z
ACTION EUR-12

INFO OCT-01 ISO-00 L-03 PM-05 ABF-01 MCE-00 IGA-02
EB-08 SS-15 SSO-00 INR-07 INRE-00 SP-02 /056 W
-----106747 101722Z /45
O 101527Z JAN 78
FM AMEMBASSY BONN
TO SECSTATE WASHDC IMMEDIATE 4633

C O N F I D E N T I A L BONN 00431

STADIS////////////////////////////////////

E.O. 11652: XGDS-3
TAGS: MPOL MILI GW
SUBJECT: RESIDUAL VALUE PROBLEM: QUESTIONS CONCERNING
TYPE OF ARRANGEMENT FOR "WASH SOLUTION"

REFS: (A) BONN 00430 (B) 77 BONN 21587;
(C) 77 STATE 307701

1. DURING DISCUSSIONS OF EMBASSY, EUROM, USAREUR AND
USAFE REPS PRELIMINARY TO THE JANUARY 5 MEETING AT
HEIDELBERG WITH GAO REPS (DORRIS AND LAMOTTE), USAFE
REPS ASKED WHAT PRECISE FORM A WASH AGREEMENT, PROBABLY
ACHIEVABLE ONLY THROUGH A US-FRG DECISION AT A HIGH
POLITICAL LEVEL, MIGHT ULTIMATELY TAKE.

2. THEY EXPRESSED VIEW THAT A WASH ARRANGEMENT WOULD
PROBABLY REPRESENT IN ESSENCE A WAIVER BY EACH SIDE OF
CERTAIN RIGHTS IT HAS UNDER THE LANGUAGE OF THE NATO
SOFA AND SUPPLEMENTARY AGREEMENT (SA). SUCH WAIVERS
WOULD PERTAIN NOT MERELY TO THE RESIDUAL VALUE CLAIMS
AND DAMAGE OR IMPROVEMENT NON-REMOVAL COUNTER CLAIMS
CONCERNING PROPERTY RELEASED IN THE PAST, BUT ALSO TO
SUCH CLAIMS RE PROPERTY RELEASED IN THE FUTURE
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(INCLUDING DOLLAR AND DM INVESTMENTS OF UNFORESEEABLE
MAGNITUDE STILL TO BE MADE).

3. IT OCCURS TO EMBASSY THAT ALTERNATIVE FORM EMPLOYED
IN ARTICLE 9(2) OF THE FINANCE CONVENTION, AS AMENDED,
SIGNED PARIS OCTOBER 23, 1954 AND RATIFIED WITH OTHER
"BONN CONVENTIONS" AFTER SENATE ADVICE AND CONSENT,

MIGHT BE CONSIDERED, IN WHICH CORRESPONDING CLAIMS AND COUNTER CLAIMS WOULD BE "DEEMED TO CANCEL EACH OTHER OUT."

4. NEITHER USAREUR NOR EMBASSY HAS FOCUSSED ON THIS ASPECT OF THE WASH PROPOSAL THAT MIGHT WELL BE OF CONSIDERABLE IMPORTANCE. THIS IS SO AS PRESUMABLY THE WASH APPROACH COULD BE ACCEPTABLE TO THE FRG ONLY IF IT WERE TO REMAIN CONFIDENTIAL (AS ARE FRG RESIDUAL VALUE NEGOTIATIONS WITH EACH SENDING STATE) AND/OR IF IT DID NOT REQUIRE A FORMAL AMENDMENT TO THE SA BUT RATHER MERELY AN AGREEMENT AS TO HOW THE SA WOULD BE IMPLEMENTED, OR WHAT WOULD BE DEEMED TRUE, BY THE US AND FRG IN THIS RESPECT.

5. WHILE THE SA IS A MULTILATERAL AGREEMENT, THE RIGHTS AND OBLIGATIONS APPEAR TO RUN ONLY BETWEEN THE FRG AND THE INDIVIDUAL SENDING STATES; THUS, WE BELIEVE A BILATERAL US-FRG EXECUTIVE AGREEMENT ON IMPLEMENTATION MIGHT BE POSSIBLE FROM THE INTERNATIONAL TREATY POINT OF VIEW WITHOUT THE INVOLVEMENT OF THE OTHER SENDING STATES. THE FACT THAT THE SA WAS APPROVED (RATHER THAN RATIFIED) BY THE USG, WITHOUT THE ADVICE AND CONSENT OF THE US SENATE, PROBABLY MEANS THAT AN EXECUTIVE AGREEMENT WOULD BE POSSIBLE SO FAR AS WE ARE CONCERNED.

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6. THE DEPARTMENT, IN FURTHER EXAMINING THE WASH PROPOSAL, MAY WISH MORE FULLY TO CONSIDER THE TREATY AND CONSTITUTIONAL ASPECTS OF ITS FORMAL CONCLUSION.
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Message Attributes

Automatic Decaptioning: Z
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: MILITARY PLANS, MILITARY AGREEMENTS
Control Number: n/a
Copy: SINGLE
Draft Date: 10 jan 1978
Decaption Date: 20 Mar 2014
Decaption Note: 25 YEAR REVIEW
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978BONN00431
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: X3
Errors: N/A
Expiration:
Film Number: D780014-1149
Format: TEL
From: BONN
Handling Restrictions:
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t19780182/aaaacriu.tel
Line Count: 99
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 31b06de5-c288-dd11-92da-001cc4696bcc
Office: ACTION EUR
Original Classification: CONFIDENTIAL
Original Handling Restrictions: STADIS
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 2
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: STADIS
Reference: 78 BONN 430, 77 BONN 21587, 77 STATE 307701
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 19 may 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 3803654
Secure: OPEN
Status: NATIVE
Subject: RESIDUAL VALUE PROBLEM: QUESTIONS CONCERNING TYPE OF ARRANGEMENT FOR \"WASH SOLUTION\"
TAGS: MPOL, MILI, GE
To: STATE
Type: TE
vdkgvwkey: odbc://SAS/SAS.dbo.SAS_Docs/31b06de5-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014